

# Module 2

## ESC Law and Regulations for Inspectors



## Erosion and Sediment Control in Virginia

Law (§ 62.1-44.15:51 through §62.1-44.15:66)



Regulations (9VAC25-840-10 through 9VAC25-840-110)



Erosion and Sediment Control



## Administrative Guidelines

- Each ESC program must contain four elements (which are evaluated during the local ESC program review)
- These components are:
  - Administration
  - Inspection\*
  - Plan Review
  - Enforcement

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## Inspection requirements

### 62.1-44.15:58-A

- Requires inspections of land disturbing activities by program authority
- Allows for monitoring reports to be submitted by the person responsible for the project (RLD)


### 62.1-44.15:60

Provides the right of entry by the Department or VESCP for inspection and enforcement




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## Knowledge Check:





Which of the following best describes the purpose(s) of the Virginia Erosion and Sediment Control Law and Regulations?

**Answer:**

- a) They are the legal basis for all local erosion and sediment control programs
- b) They establish the rights and responsibilities of local government in administering the law
- c) They establish the right and responsibilities of public and private land users in the Commonwealth when disturbing land
- d) All of the above 

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## An Effective Inspection Program

**An inspector must:**

- Posses an understanding of the rules established by state law, the regulations and the local ordinance
- Organize a system to implement those rules effectively



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## Importance of Understanding the Law

- A good understanding of the Law helps to effectively implement local E&S programs
- Unless local officials act within the limits of the law, enforcement actions may become unsuccessful
- Negligent or inappropriate application of an E&S program may even result in legal action against the Authority
- Training local VESCP officials and experience will help improve local program consistency

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## The Inspector

- The inspector must be "Certified" according to 62.1-44.15:51 (Definitions) and 62.1-44.15:53 (Certification of Local Program Personnel)



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## Regulated Activities & Overview of the E&S Law

The stated intent of the law is “for the effective control of soil erosion, sediment deposition, and non-agricultural runoff to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources”



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## Role of the Inspector

- During construction, the inspector is required to ensure that the land disturbing activity (the site) is in compliance with the approved plan *and* the minimum standards of the regulations.
- Periodic inspections are required to be conducted on each land disturbing activity.

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## Types of Inspections

1. Initial installation of perimeter controls



2. Regular inspections (possible complaint driven inspections)



3. Project completion. Inspection before release of surety



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## Inspection Report

- A form used to record a potential problem or violation;
- A way to make sure the responsible person (job superintendent or RLD) is made aware of a problem;
- Written documentation to help track the arguments or agreements made with the job superintendent;
- A description of problem and advice on how and when it should be corrected.

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## Maintenance and Inspections (9VAC25-840-60)

**Inspections need  
to be  
documented!**

**If it isn't in writing  
it didn't  
happen!**

Reply To: [INSERT ADDRESS]	[INSERT LOGO]
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**INSPECTION REPORT**

Project Name: \_\_\_\_\_ Project Authority: \_\_\_\_\_  
 RLD Name: \_\_\_\_\_ RLD No. \_\_\_\_\_  
 Project Location: \_\_\_\_\_ Project No. \_\_\_\_\_  
 Inspector Name: \_\_\_\_\_ Inspection Date: \_\_\_\_\_ Time: \_\_\_\_\_

**STAGE OF CONSTRUCTION**

Pre-Construction Conference <input type="checkbox"/>	Building Construction <input type="checkbox"/>	Construction of SWM Facilities <input type="checkbox"/>
Clearing & Grubbing <input type="checkbox"/>	Finish Grading <input type="checkbox"/>	Maintenance of SWM Facilities <input type="checkbox"/>
Rough Grading <input type="checkbox"/>	Final Stabilization <input type="checkbox"/>	Other <input type="checkbox"/>

Item#	State/Local Regulation <sup>(1)</sup>	Violation		Description and Location of Problem/Violation <sup>(1)</sup> , Required or Recommended Corrective Actions, and Other Comments/Notes
		Initial	Repeat	

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## Inspection reports

**Inspection reports serve as notice of either non-compliance or compliance**

**Issues of non-compliance must have a deadline for correction**



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## Inspections

Inspections should be done with the following items in mind:

- Does the project comply with the Minimum Standards?
- Does the project comply with the standards and specifications in the ESC Handbook? (or an approved variance or other local requirements)
- Is the project being constructed in accordance with the approved plan?

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## The objective of Inspections

Does the project/regulated land disturbance activity meet the requirements of:

- The ESC Law
- The ESC Regulations
- Local ordinances
- VESC Handbook

The approved plan

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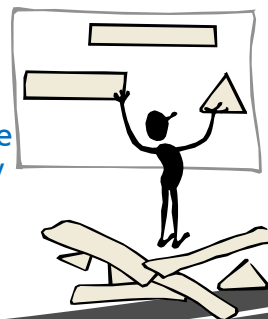
## Change of Plan? 62.1-44.15:55-C



Plan may be changed when:

1. Inspection reveals inadequacies
2. Change in circumstances

(All changes need to be consistent with the law, regulations, specifications and any local requirements. May require additional plan review/approval)



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## Variance Procedure 9VAC25-840-50

### Request

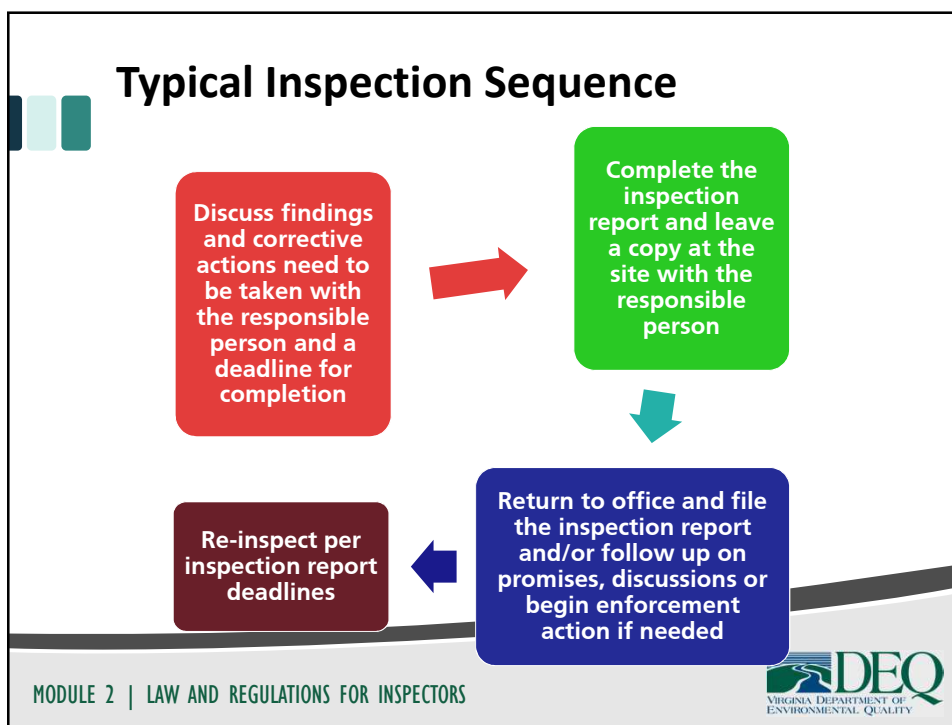
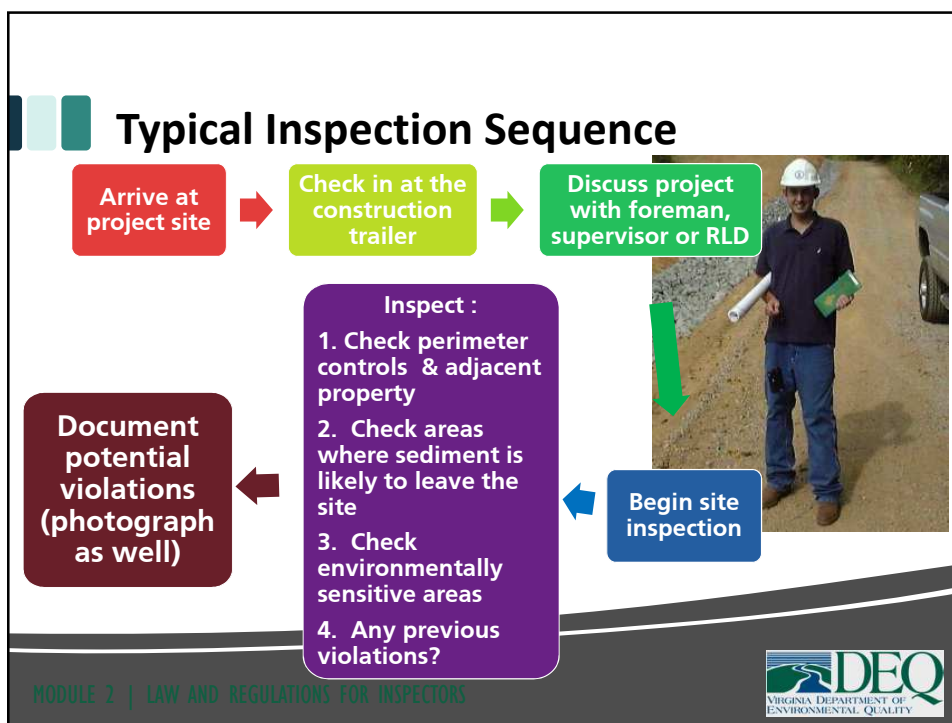
- At time of plan submittal
- During construction when field conditions/situations changes
- Must be done in writing
- Cannot be done for economic reasons (i.e. too expensive)

### Review

- 10 days
- After 10 days, it is automatically denied
- Approval must be judicious

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## Maintenance and Inspections (9VAC25-840-60)

### B. Periodic inspections are required on all projects by the program authority.

The program authority shall either:

- Provide for an inspection during or immediately following installation of E & S Controls, at least once every two-week period,
- within 48 hours following any runoff producing storm event, &
- at the completion of the project prior to the release of any performance bonds: **or**

## Maintenance and Inspections (9VAC25-840-60)

2. Establish an alternative inspection program which ensures compliance with the approved erosion and sediment control plan. Any alternative inspection program shall be:

- (a) Approved by the Board prior to implementation;
- (b) Established in writing;
- (c) Based upon a system of priorities that, at a minimum, address the amount of disturbed area, site conditions and stage of construction; and
- (d) Documented by inspection records.

## Photographs



- Court action may take a long time and situation in the field may change.
- Enforcement action may be more effective.
- Take before photographs.
- Take pictures of environmentally sensitive areas, adjacent areas, downstream areas.
- Take photographs of final stabilization conditions.

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## Enforcement

The process of compliance

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## Documentation

- Document each inspection in writing (example report on DEQ website).
- Record whether or not a possible violation is found.
- The more documentation the better in case of a court case or further enforcement actions.
- Photographs taken will help clarify inspection reports.

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## Compliance Formula

Proper  
construction  
of controls at  
the right  
time



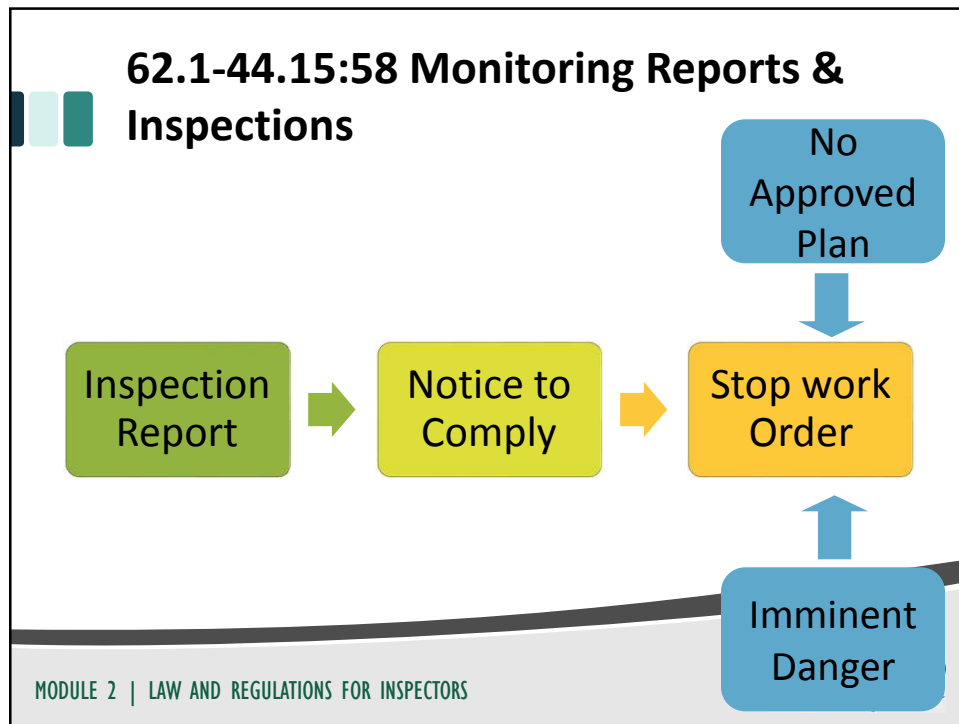
Proper  
maintenance  
of controls



Effective  
Sediment  
Control

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### 62.1-44.15:58:Monitoring, Reports and Inspections

**A. If the VESCP determines that there has been a failure to comply with the plan**

- Notice shall be served upon the permittee or person responsible for carrying out the plan
- Registered or certified mail or delivered to the site to the supervisor



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## 62.1-44.15:58:Monitoring, Reports and Inspections

### A. Notice to Comply

- Shall specify measures needed to comply
- Time the measures are to be completed
- Failure to comply means permittee or person responsible shall be deemed in violation and subject to penalties

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## 62.1-44.15:58:Monitoring, Reports and Inspections

### C. Stop Work Order

- The program authority may issue an order requiring all or part of the land-disturbing activity on the permitted site to be stopped until specific corrective measures have been taken
- Is in effect for 7 days
- Issued after a Notice to Comply
- By pass Notice to Comply if imminent danger of causing harm or LDA has started without an approved plan

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## Categories of Typical Violations

- 1 Working without an approved plan (VESCL §62.1-44.15:55A and VESCL §62.1-44.15:58C)
- 2 Not following (failure to comply with) the approved plan (VESCL §62.1-44.15:58A)
- 3 Not following the minimum standards (9VAC25-840-40 and VESCL §62.1-44.15:58A)
- 4 Not following the design standards and specifications (VESCHB and VESCL §62.1-44.15:58A)
- 5 Having no RLD on the project (VESCL §62.1-44.15:58B)
- 6 Imminent danger to the environment and human population (VESCL §62.1-44.15:58C)

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## Penalties, injunctions and other legal actions 62.1-44.15:63.

Class 1 misdemeanor

or;

Civil Penalties 62.1-44.15:54-K Local programs are allowed to adopt an ordinance providing for Civil penalties in lieu of criminal sanctions for violations.

Civil penalty for any one violation with an approved plan shall be \$100 to \$1,000 per day, with a max. total of \$ 10,000

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## 62.1-44.15:56 State Agency Projects

### 62.1-44.15:56-F

- **Makes state agency responsible for compliance with approved plans**

### 62.144.15:56-G

- **Makes state and federal agencies responsible for plan review and inspections with DEQ's oversight, enforcement, compliance review and evaluation**



## In Addition to ESC Inspections during construction:

- Projects disturbing land equal to or greater than 1 acre must have coverage under the Virginia Construction General Permit (CGP)

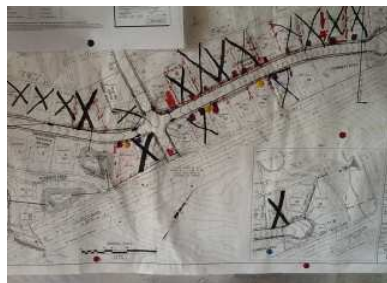
## In Addition to ESC Inspections during construction:

- Each project must have a SWPPP on site that includes a P2 (Pollution Prevention Plan)
- P2 plan is dynamic, “living” document that addresses other forms of potential pollution during construction
- Potential pollutant sources/activities and P2 practices may change over time

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## In Addition to ESC Inspections during construction:



- The P2 plan changes as site conditions change.
- The operator is responsible for updating the P2 plan.

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## In Addition to ESC Inspections during construction:

### P2 plan

- 880-70 Part II – Stormwater Pollution Prevention Plan (SWPPP)
- A.4. Pollution prevention plan
  - a. Potential pollutants and their location
  - b. Describe location of potential pollutant-generating activities  
(Can reference the site plan)
  - c. Identify all authorized nonstormwater discharges that will be commingled with stormwater discharges
  - d. Identify the person responsible for implementing the pollution prevention practice or practices for each pollutant-generating activity  
(If other than the person listed as the qualified personnel)

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## In Addition to ESC Inspections during construction:

### P2 plan

- e. Describe pollution prevention practices and procedures that will be implemented to:
  - 1) Prevent and respond to leaks, spills, and other releases



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## In Addition to ESC Inspections during construction:

P2 plan:

- 2) Prevent the discharge of spilled and leaked fuels and chemicals from vehicle fueling and maintenance activities



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## In Addition to ESC Inspections during construction:

P2 plan

- 3) Prevent the discharge of soaps, solvents, detergents, and wash water from construction materials





## In Addition to ESC Inspections during construction:

P2 plan

- 4) Minimize the discharge of pollutants from vehicle and equipment washing, wheel wash water, and other types of washing

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## In Addition to ESC Inspections during construction:

Good housekeeping tips:

- ✓ Wash offsite at an appropriate facility
- ✓ Locate away from storm drain inlets, drainage facilities and waterways
- ✓ Use filtration and settling devices to remove sediments
- ✓ Direct wash waters to basins, traps or other suitable BMPs

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## In Addition to ESC Inspections during construction:

★ Remember, no discharge of  
soaps, solvents or detergents!

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## In Addition to ESC Inspections during construction:

- 5) Direct concrete wash water into a leak-proof container or leak-proof settling basin



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## In Addition to ESC Inspections during construction:

- ✓ No overflows
- ✓ Hardened concrete waste removed and properly disposed of
- ✓ Liquid concrete waste removed and properly disposed of

[www.epa.gov/npdes/pubs/concretewashout.pdf](http://www.epa.gov/npdes/pubs/concretewashout.pdf)

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## In Addition to ESC Inspections during construction:

- 6) Minimize the discharge of pollutants from storage, handling, and disposal of construction products, materials, and wastes



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## In Addition to ESC Inspections during construction:

### Construction Waste



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## In Addition to ESC Inspections during construction:

- 7) Prevent the discharge of fuels, oils, and other petroleum products, hazardous or toxic wastes, and sanitary wastes





## In Addition to ESC Inspections during construction:

- 8) Address any other discharge from the potential pollutant-generating activities



## In Addition to ESC Inspections during construction:

- f. Describe procedures for providing pollution prevention awareness to personnel in order to comply with the conditions of the permit